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The Honorable John D. Dingell
Ranking Member, Committee on Energy and Commerce
United States House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Dingell:

Thank you for your letter to our Chairman and Chief Executive Officer, Edward E. Whitacre, Jr., dated March 29, 2006, regarding H.R.___, a Committee print on the Communications Opportunity, Promotion, and Enhancement Act of 2006 (the "draft COPE Act"). AT&T Inc. ("AT&T") appreciates your continued interest in and leadership on these issues. In the interest of time, I will respond to your letter on behalf of Mr. Whitacre.

As you know, we believe that reform of the regulations for video competition should be a priority for Congress, as it will usher in a new era of much needed competition in this segment of the communications industry. For this reason, AT&T supports the draft COPE Act. Like other highly successful de-regulatory models, such as in the wireless and broadband arenas, the draft COPE Act would unshackle new entrants from legacy regulations designed for incumbents that faced entirely different competitive circumstances at the time of their market entry. In particular, new entrants would not be required to negotiate potentially thousands of separate local franchises, and therefore comply with thousands of distinct regulatory regimes, in order to offer service. At the same time, the bill would protect the legitimate interests of local governments with respect to, among other things, their revenue streams, the carriage of public programming, and their control over their rights-of-way and public spaces.

We do understand, however, that you have misgivings about the draft bill. We take your views seriously, and wish to be a constructive participant in this process. We look forward to working with you, Chairman Barton, and other members of the Committee on Energy and Commerce to accomplish the critical goal of streamlining video regulations. To that end, set forth below are answers to the numbered questions in your letter.

1. *Will AT&T's planned IP video service (provided over Project Lightspeed or any similar advanced wireline infrastructure) fall within the definition of "cable service" under Federal law? Please state in technical detail the reasons why AT&T believes the*

service will or will not be covered, including whether any part of AT&T's service will involve the one-way transmission to subscribers of video programming (irrespective of any subscriber interaction that may be required for the selection or use of such programming).

As AT&T has explained in comments filed with the Federal Communications Commission and elsewhere, its IP-enabled video service is delivered over a two-way, switched broadband network that is designed to deliver a suite of integrated advanced services, not just video. The video service itself is an inherently interactive, two-way service that allows subscribers to communicate on an ongoing basis with the network, tailor their video service to create a personalized viewing experience, and integrate the video service with other services and devices enabled by the broadband network. For these reasons, AT&T's Project Lightspeed, IP-enabled video service is not a "cable service" under section 602 of the Communications Act, 47 U.S.C. § 522(6), which defines "cable service", in pertinent part, as a "one-way" transmission of video programming services.

In addition, because AT&T's IP-enabled video service is not a "cable service," its IP-based broadband network used to deliver such service is not a "cable system." Among other things, a "cable system," as defined at 47 U.S.C. § 522(7), is one "that is designed to provide cable service..." In that AT&T's IP-enabled video service will not be a "cable service," the broadband network is not designed to provide a "cable service" and, therefore, is not a "cable system," as a matter of law.

Finally, neither AT&T nor any of its subsidiaries that might offer IP-enabled video service will be a "cable operator" under the Act, which defines the term at 47 U.S.C. §522(5) as:

> ...any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system[.]

In short, because AT&T will not be providing a "cable service" over a "cable system," it cannot, by definition, be a "cable operator" under the Act.

For a fuller explanation of these issues and arguments, please see the enclosed copies of two ex partes filed with the Commission: (1) Letter dated September 14, 2005, from James C. Smith, Senior Vice President, SBC Services, Inc., to Marlene H. Dortch, attaching a document entitled "The Impact and Legal Propriety of Applying Cable Franchise Regulation to IP-Enabled Video Services," submitted in WC Docket No. 04-36; and (2) Letter dated January 12, 2006, from

James C. Smith, Senior Vice President, AT&T Services, Inc., to Marlene H. Dortch, submitted in WC Docket No. 04-36.

2. *Would AT&T's planned IP video service be eligible for national franchising under the Committee Print of the Communications Opportunity, Promotion, and Enhancement Act of 2006? If not, do you propose changes to that legislation?*

As demonstrated by its support for state-level video regulation reform, AT&T considers the rational, streamlined regulatory structure reflected in the draft COPE Act preferable to the specter of continued uncertainty and litigation over the classification of its service. While AT&T is confident in its interpretation of the law as applied to its IP-enabled video service, many franchising authorities and incumbent cable operators disagree, and have taken concrete steps to hinder AT&T's deployment of its next-generation broadband capabilities and IP-based video services. Just by way of example, the city of Walnut Creek, California, has refused to permit AT&T to perform line conditioning necessary to deploy advanced Project Lightspeed services unless it first agrees to obtain a Title VI cable franchise before providing any type of video service. Because the city's position may leave AT&T unable to deploy Project Lightspeed without waiving its rights, AT&T has been forced to file suit against the city in federal court. AT&T has been forced to file a similar suit against the City of Lodi, California. AT&T has undertaken such measures in response to efforts to stymie its deployment because the alternative – submitting itself to an antiquated regulatory regime that would force it to seek some 2,000 separate local franchises – simply is not a realistic option and would force it to seriously rethink its video and broadband deployment plans.

In the end, AT&T's specific eligibility should not be the lynchpin for evaluating the draft bill's benefits. If AT&T's service were conclusively determined to be a "cable service," then clearly the service would fall within the ambit of the national franchise. If not, then AT&T would not be subject to franchise regulations under the Cable Act, including as modified by this draft bill. Either way, the benefits of the draft bill to consumers would be profound, as all providers would be able to more quickly and nimbly bring competition to a market thirsty for it. To the extent, however, that you and other members may be concerned that AT&T would not be covered by the draft COPE Act, we would welcome discussions with the Committee to ensure that AT&T's video offering falls under the bill.

3. *Will AT&T's planned IP video service be delivered over a "cable system" as such term is defined under Federal law? Please provide, in legal and technical detail, the reasons why AT&T believes the service will or will not be delivered over a cable system.*

Please see the response to Question No. 1.

4. *Will AT&T and/or its subsidiaries that offer IP video service be a "cable operator" as that term is defined under Federal law? Please provide, in legal and technical detail, the reasons why AT&T believes it will or will not be a cable operator.*

Please see the response to Question No. 1.

5. *Does AT&T plan to use public rights of way in delivering its IP video service to subscribers?*

Yes. While not every component of the broadband network used to deliver AT&T's IP-enabled video service will utilize public rights-of-way, much of it will.

6. *Does AT&T believe that it is appropriate for Congress to distinguish among services based on the technological manner in which programming is delivered?*

As a general matter, AT&T believes that the nation's communications laws should be designed to foster competitive entry and investment by ensuring that new entrants, regardless of the technologies they may use to compete, do not face regulatory burdens that may have made sense for incumbents. In the case of the Cable Act, Congress chose to link the pervasive web of cable franchise regulation to a particular technology, that is, traditional one-way cable technology. While perhaps perfectly appropriate at the time, this more technology-specific approach has the potential effect now of foisting on new entrants to the video services market that utilize traditional cable technology the same regulations that the entrenched cable incumbents face. Now that a raft of determined would-be competitors stand ready to take on the incumbents, reform is necessary to ensure that the decades-old choices embodied in the Cable Act do not warp today's promise of widespread competition.

With respect to your request for copies of filings and related documentation offered in any legislative, regulatory or judicial proceeding in the last two years in which AT&T has advanced its position regarding the classification of its IP-enabled video service under federal law, we enclose copies of the following: (1) two ex partes submitted to the Commission, referenced above; (2) AT&T's initial and reply briefing before the Connecticut Department of Public Utility Control in Docket No. 05-06-12; (3) AT&T's Complaint for Declaratory Judgment and Injunction; Petition for Writ of Mandamus filed before the United States District Court, Northern District of California, in Case No. C 05 4723; and (4) AT&T's Verified Petition for Writ of Mandamus; and Complaint for Declaratory Judgment, filed in Superior Court of the State of California in Case No. CV028523. As you can imagine, the group of documents that might be "related" to any proceeding, especially a legislative proceeding, and that might bear on this issue would be quite voluminous. The attached documents reflect AT&T's position on these matters.

We appreciate the opportunity to more fully explore these issues and trust that the foregoing adequately addresses your inquiry. Please let us know if you require additional information.

Very truly yours,

Tim McKone

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Fred Upton, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Edward J. Markey, Ranking Member
Subcommittee on Telecommunications and the Internet